IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11908 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

Y A MALEK

Appearance:

1. Special Civil Application No. 11908 of 2000

MS ROOPAL R PATEL for Petitioner No. 1

MR ASHISH M DAGLI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/09/2001

ORAL JUDGEMENT

Rule. With the consent of the parties, the matter has been taken up for final hearing today.

The respondent who was working as a driver with the petitioner-Corporation came to be dismissed from service on the ground that he remained absent from duty unauthorisedly. The said order was challenged by the respondent- workman by raising an industrial dispute. The Labour Court came to the conclusion that the penalty of removal from service was on the higher side compared to the misconduct, and therefore, while exercising powers under Section 11A, the Labour Court ordered reinstatment of the respondent workman with 40% backwages and continuity of service. It is not in dispute that the respondent-workman has already retired by way of superannuation in the month of May, 1999 i.e. prior to the date of award. In that view of the matter, so far as the order of reinstatement is concerned, the Corporation is not required to reinstate the respondent-workman. However, the Corporation is directed to calculate the retiral benefits that may accrue to the respondent-workman treating his services as continued up to the date of superannuation in May 1999. On that basis whatever amount is required to be paid to the respondent-workman shall have to be paid to him.

So far as the backwages are concerned, learned Advocate appearing for the respondent-Corporation states that this not not a case in which backwages can be awarded to the respondent-workman as the respondent workman ought to have taken care to submit the leave report in time. However, having regard to the facts and circumstances of the case, it is directed that the respondent workman shall be entitled to 30% backwages instead of 40% backwages as ordered by the Labour Court.

In the result, subject to the modification as aforesaid, the petition is partly allowed. The order of the Labour Court is modified to the extent that the petitioner- Corporation is directed to pay to the respondent-workman the retiral benefits that may aaccrue to him calculating the backwages at 30% treating his services as continued upto the date of his superannation in May 1999 within a period of two months from today. The rest of the award of the Labour Court stands confirmed. Rule is made absolute accordingly.

(P.B. Majmudar,J.)

stanley-pbm.